

**PROCEEDINGS OF THE BROWN COUNTY**  
**PUBLIC SAFETY COMMITTEE**

Pursuant to Section 19.84 Wis. Stats., a regular meeting of the **Brown County Public Safety Committee** was held on Wednesday, March 6, 2019 in Room 200 of the Northern Building, 305 E. Walnut Street, Green Bay, Wisconsin.

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**Present:** Chair Buckley, Supervisor Schadewald, Supervisor Nicholson, Supervisor Borchardt  
**Excused:** Supervisor Gruszynski  
**Also Present:** Supervisors Deneys, Brusky, Deslauriers and Hoyer, Director of Public Safety Communications Cullen Peltier, Emergency Management Director Jerad Preston, Medical Examiner Director of Operations Barry Immen, Sheriff Todd Delain, Office Manager Michelle Wallerius, District Attorney David Lasee, Office Manager Michele Andresen, Director of Administration Chad Weininger, Corporation Counsel David Hemery, Clerk of Courts John Vander Leest, other interested parties and media

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**I. Call meeting to order.**

The meeting was called to order by Chair Pat Buckley at 4:00 pm.

**II. Approve/Modify Agenda.**

*It was noted Items 22 & 23 would not be taken up on this Agenda.*

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**III. Approve/Modify Minutes of February 6, 2019.**

**Motion made by Supervisor Nicholson, seconded by Supervisor Schadewald to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Comments from the Public.** *None.*

**1. Review Minutes of:** *None.*

**Public Safety Communications**

**2. 2018 to 2019 Carryover Funds.**

Public Safety Communications Director Cullen Peltier informed this carryover is related to the ongoing CAD project.

**Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**3. Director's Report.**

Peltier reported they rolled back to the old system around February 20. The rollback was overall very successful and the transition has been smooth for the most part. At this point they are still looking at all options to figure out what direction to go. Some staff has gone to other counties to look at different systems and, in addition, they continue to communicate with Securis who is working on some updates. Peltier hopes to have some sound information by the next meeting.

Peltier also informed that his department concluded 2018 under budget and final figures will hopefully be available for the next meeting. There has been a little higher turnover than usual recently but they do have a number of new hires currently in training.

**Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Emergency Management**

**4. Director's Report.**

Emergency Management Director Jerad Preston informed his department is continuing to work on the mitigation project and has been working with the Planning Department on this. They also continue to work with surrounding towns and villages on various exercises. Preston concluded by saying his department ended 2018 with good budget numbers.

**Motion made by Supervisor Borchardt, seconded by Supervisor Nicholson to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**District Attorney**

**5. 2018 to 2019 Carryover Funds.**

District Attorney David Lasee informed this carryover request relates to expert witnesses fees they would like to be carried over and applied to pending cases in 2019.

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**6. District Attorney Report.**

Lasee said his office continues to be quite busy. He informed that both the Legislature and Governor's budget proposals included help for the DA's office. The Legislature's proposal included three positions while the Governor's proposal included one position. Lobbying efforts are continuing on both fronts to try to add staff to the office and it is good to see there is acknowledgement that additional staff is needed by both the Legislature and the Executive Branch.

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Circuit Courts, Commissioners, Probate**

**7. Report re: The costs for court appointed attorneys. *Motion at February meeting: That the costs for court appointed attorneys be tracked and reported to the Public Safety Committee.***

Office Manager Michelle Wallerius informed Judge Atkinson does not have these figures together yet, but he has this on the agenda for the next judge's meeting which will be held on March 11, 2019.

**Motion made by Supervisor Borchardt, seconded by Supervisor Schadewald to hold for one month. Vote taken. MOTION CARRIED UNANIMOUSLY**

**8. 2018 to 2019 Carryover Funds.**

Wallerius informed this carryover is for security glass in the Court Commissioner's Office, which has already been installed.

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**9. Director's Report.**

*No report; no action taken.*

**Clerk of Courts**

**10. Clerk of Courts Report.**

*No report; no action taken.*

**Medical Examiner**

**11. Budget Status Financial Report for January 2019 – Unaudited.**

At this time Director of Administration Chad Weininger distributed a revised Carryover Funds list to include \$4,000 for the Medical Examiner. He recalled that approval had previously been given for a vehicle for the ME office which included some equipment, however, that equipment was not purchased in 2018 and therefore request is being made to carryover funds to 2019 for completion of work on the vehicle.

Weininger noted the Medical Examiner's budget will be finishing to the good for 2018 and Medical Examiner Director of Operations Barry Irmen informed the majority of the savings is from lower autopsy numbers for the year.

*Action on the carryover funds was taken at Item 14.*

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**12. Medical Examiner's Report.**

**Motion made by Supervisor Nicholson, seconded by Supervisor Schadewald to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Sheriff**

**13. Update re: Jail Addition – Standing Item.**

Sheriff Todd Delain reported the project is continuing to move forward. The presentation referenced on this agenda at Item 22 will need to be pushed back a little but the schematics are nearly complete. There have been some minor modifications but the project should come in within the budget that has been set. Schadewald asked what caused the delay in the schematics and Delain responded the delay appears to be on the ME portion of the project and noted that pushing the presentation back a month will be okay because that will allow time for them to address one outstanding issue related to the operations of the jail.

*No action taken.*

**14. 2018 to 2019 Carryover Funds.**

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to amend the 2018 to 2019 Carryover Funds to include \$4000 for the Medical Examiner for completion of work on the ME vehicle and approve as amended. Vote taken. MOTION CARRIED UNANIMOUSLY**

**15. Budget Adjustment Request (19-021): Any increase in expenses with an offsetting increase in revenue.**

This budget adjustment is to increase grant revenue and related outlay expenses to participate in a Homeland Security WEM ALERT SWAT Ballistics Shields grant. The grant provides funds for the purchase of ballistic protection equipment consisting of two ballistics shields; one for \$6000 and one for \$4000. There is no local match for this grant and no impact to the levy.

**Motion made by Supervisor Schadewald, seconded by supervisor Borchardt to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**16. Sheriff's Report.**

Delain informed the weather has kept the Sheriff's Office very busy over the last month with crashes and other weather related issues. Schadewald asked if anything is needed by the Sheriff's Office to help address all the weather related issues. Delain said the Sheriff's Office is prepared to handle whatever comes up at any time, but on days when things get very busy they may have to call additional people in or have some work longer hours. Schadewald also referenced the recent accident on the Leo Frigo Bridge and Delain informed that that was in the City of Green Bay, but the Sheriff's Department assisted with traffic control in several locations.

Delain distributed the Key Factor Report through February 2019 and a copy of the same is attached. He informed that the books are not closed for 2018 yet, however the Sheriff's Office will finish in the red.

**Motion made by Supervisor Borchardt, seconded by Supervisor Schadewald to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Communications**

- 17. Communication from Supervisor Buckley re: Have the District Attorney's Office be prepared to have a discussion on potential offenses that can/could be sent to Municipal Court for action. *Motion at December 2018 meeting: To hold for three months.***

DA Lasee said he has reached out to all agencies and has heard back from a number of them with regard to what their current policies are and this was followed by discussions with some law enforcement and municipal attorneys regarding how things are handled in municipal court. The general consensus Lasee received from both law enforcement and municipal court attorneys was that there is a general practice on the part of law enforcement to send everything they can to municipal court. The City of Green Bay recently modified their ordinance to reduce the fine with respect to marijuana charges and they also allow second offense marijuana tickets to go to municipal court which Lasee is agreeable with as long as it is under a certain threshold. He has had discussions with other municipalities that if their officers, in their discretion, feel marijuana is a small amount for personal use, less than one ounce, that regardless of whether it is a first or second offense it can go to municipal court.

Lasee continued that the major case types he discussed with the agencies are possession of THC, possession of drug paraphernalia, retail theft, theft from an employee or family or friend, disorderly conduct and battery, and criminal damage to property. All of these things are pretty universally found in the ordinance adopted by the municipalities as well as the County ordinances.

Lasee noted feedback he received from Brown County that there does not appear to be a Brown County ordinance violation for battery but most of the municipalities have adopted that. It may be helpful to have such an ordinance in Brown County because this comes up sometimes in circumstances such as bar fights where it may not be clear who the primary party is and there are not serious injuries. Lasee feels the County adopting the state statute with regard to battery in the ordinances may be helpful.

With regard to retail theft cases, one of the things that was raised as an issue is that the ability to gather restitution of municipal courts is limited. A lot of times they will leave the case open on the front end and ask for restitution to be paid up front and then will make a resolution that reflects that resolution has been paid. The state court has more options with regard to recovering restitution.

Lasee continued that law enforcement knows the DA is swamped so most of the officers would rather send things to municipal court and a lot of that is being handled in municipal courts already. He does intend to have specific conversations with regard to retail theft cases to say not to send anything to the DA's office under \$100.

With regard to property damage or property theft, Borchardt asked if there was a specific amount that is handled in municipal court. Lasee said the City of Green Bay sends anything of \$500 or less to municipal court, but there is also some discretion there. He noted anything over \$2500 is a felony and those cases would not go to municipal court. They do use some discretion and there are factors such as if the theft is from a parent or other loved one who does not want to press charges, it would likely go to municipal court, even if the amount is over \$500.

Schadewald asked about training between the DA's office and law enforcement regarding how tickets are assigned. Lasee responded that he regularly addresses the departments to do training and they talk about this. He feels the officers do a pretty good job of exercising their discretion because the officers on the ground have the best idea of things like how cooperative parties are and how aggravated something is. Lasee added that his office has the discretion to send cases back to the issuing agency if they do not feel it meets the appropriate thresholds.

Buckley asked about the county battery ordinance Lasee spoke of earlier. Corporation Counsel Dave Hemery said an ordinance could be done on this.

Lasee concluded that he intends to send out some directives to have consistency on the dollar amounts so everyone knows where everyone else is at. Buckley asked Lasee to provide a copy of those directives to the Committee as well.

**Motion made by Supervisor Borchardt, seconded by Supervisor Schadewald to refer to Corporation Counsel to draft an ordinance regarding battery and bring back. Vote taken. MOTION CARRIED UNANIMOUSLY**

18. **Communication from Supervisor Deslauriers re: Whereas the Brown County Board of Supervisors has the legal authority to restore 'Protective Occupation Participant' status to Brown County Corrections Officers and,**  
**Based on the criteria established in Wisconsin Statute 40.02(48)(a), the "principal duties" of Brown County Corrections Officers "involve active law enforcement," requires "frequent exposure to a high degree of danger or peril," and also requires "a high degree of physical condition," and**  
**Based on chronic Correction Officer understaffing (that will potentially be made worse with the expansion of the Brown County jail), that it is important to the health, safety, and welfare of Corrections Officers, our inmates, and the general public to provide a stronger incentive package to attract and maintain Corrections Officers, and**  
**Based on the costs of restoring protective status when compared to the costs to recruit and train new Corrections Officers, Brown County sees the financial value of restoring protective status.**  
**That the Brown County Board of Supervisors supports restoring and funding 'Protective Status with Social Security' for Brown County Corrections Officers. *Motion at February meeting: To refer to Corporation Counsel to bring the resolutions passed in other Wisconsin counties as well as a fiscal impact back to the next meeting.***

Hemery recalled the request at the last meeting was for Corporation Counsel to obtain copies of resolutions from other counties that have protective status for jailers. He said that would be somewhat difficult to do and would involve a lot of time and he was not certain the Committee would feel that was the best use of time. As a starting point, however, Hemery put together a list of counties that classify their jailers as protective status, a copy of which is attached. He was not able to find resolutions easily, but he is willing to do so if the Committee desires him to do so. He said resolutions would say that the jailers meet the three criteria to have protective status and would designate them as having that status.

Hemery continued by referencing an e-mail he sent out earlier in the day, a copy of which is attached. The e-mail indicates that he had a phone conference with ETF in which he was informed that there are currently 26 active appeals with ETF filed by Brown County jailers. Those appeals have been on hold and ETF said they were recently contacted by jailers who asked that their appeals move forward. ETF will forward these 26 appeals to the Department of Administration Department of Hearings and Appeals who will then assign them to an Administrative Law Judge to proceed further. Any time the County is involved in litigation, Hemery's advice will always be that any matters regarding that litigation be discussed in closed session only. Open talks can harm the case and negotiations. The e-mail Hemery sent earlier today was sent to Board members and department heads advising them that any communications they receive regarding these cases should be forwarded to Corporation Counsel.

Supervisor Deslauriers informed when he wrote this communication, he did so in a manner to avoid closed session as he believes these discussions should be done in public. He is not speaking to any of the ETF appeals; his communication is basically a follow-up to past years this issue has been discussed but nothing has been done. His communication provides a path for action through County Board authority to declare the positions as protective status. The communication speaks specifically to the legal authority of the Board that the correctional officers meet the statutory requirements for protective status. The communication was drafted based on the actions of other counties and Deslauriers has done a lot of research on this. This is not to address the appeals in any way, nor is there any intent to impact the 26 individual appeals of the correctional officers. Deslauriers said if we are getting near that and considering closed session, we are veering off the communication. Buckley responded that once the employees pushed to have their appeals heard, it shut down any conversations in open session. Even discussing Deslauriers communication should be done in closed session as indicated by Corporation Counsel. Deslauriers said those appeals have been requested for years and there has been a consistent push by the correctional officers to have the appeals addressed, but the long bureaucratic process has come into play. Deslauriers feels we can stay away from the appeals and evidence and noted that there is no new information and everything he has is what has been talked about in years past in public meetings. There is no new information except Deslauriers now has a path to get this done for the correctional officers. Deslauriers does not see the relevance to his communication and why we would have to shut down an open meeting to discuss it. Buckley said there is direct correlation in that Deslauriers' communication is to get the protective status back for the correctional officers and that is the subject of the appeals and for that reason, any communication about this needs to be done in closed session as stated by Corporation Counsel.

Deslauriers asked if he could enter documents into the record. Buckley responded that Deslauriers is a County Board Supervisor, not the attorney for these correctional officers and therefore he feels this would need to be done in closed session. Deslauriers said he is pushing on this and asked the correctional officers to hold off until after the budget was done and he does not want this to drag on to a point where it becomes a timing budget issue which would cause further delay; he wants this to be handled in a timely manner.

Hemery added that he has no intention to request that the correctional officers withdraw their appeals as they certainly have a right to have their appeals. He just wants to be sure that discussions regarding pending litigation be done in closed session. He added that the term *correctional officer* typically applies to state correctional employees; what we are talking about here are county jailers.

Deslauriers added that Pepin and Pierce County also have protective status for their correctional officers. He said that he refers to these positions as correctional officers because that is the title the County has given them.

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to refer to April meeting and include a closed session on the agenda. Vote taken. MOTION CARRIED UNANIMOUSLY**

19. **Communication from Supervisor Erickson re: Have the Clerk of Courts (John Vander Leest) meet with Human Resources to determine why the department employees have been demoted. And that reconsideration be given to the employee classifications of the personnel of this very important department. This meeting should also have a cross section of the department employees. *Referred from February County Board.***

Buckley informed this is being handled by the Administration Committee.

**Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

20. **Communication from Supervisor Hoyer re: Discussion and possible action concerning how the Sheriff's Department and the District Attorney's offices can engage in formal partnership with religious organizations in investigating allegations of sexual abuse. This would include specific training for these types of investigations. *Referred from February County Board.***

Supervisor Hoyer said this was brought forward due to some things said by Chief Smith of the Green Bay Police Department indicating the importance of individuals always knowing the police are readily available to people in situations of sexual abuse as part of their job to hear those issues and assist the victims of those crimes. There are a number of organizations which have subverted those processes, including religious organizations and secondary institutions and colleges. What Hoyer is hoping to do in bringing this up is to have a discussion regarding where Brown County is at as a county because we are overseeing and responsible for the safety of a large number of individuals and to also ascertain if there are things the County can do to work cooperatively with religious or other organizations to ensure victims of these types of crimes are made available to the services of the County. Hoyer is not insulting anyone here; this is more a matter of navigating the potential issues of this set of circumstances.

Buckley asked if this communication is regarding one specific case that Hoyer feels was not followed up on. Hoyer responded he is not talking about one specific case; this is more about the history of local, state and national religious organizations having subverted the process.

Schadewald asked Sheriff Delain what the process is when an officer receives a report of a sexual abuse. Delain responded that Brown County has a sexual assault protocol and added that he and DA Lasee sit on the Community Coordinated Response to Sexual Assault and Domestic Violence Committee. He continued that every law enforcement agency, including the City of Green Bay, follows the same SART (Sexual Abuse Response Team) protocol. Every incident reported is handled the same and allegations of sexual assault are dealt with as a high priority. Delain continued that the Sheriff's Department does training on this regularly as part of in-service and part of the DA's legal updates are regarding sexual assault cases and the prosecution of them.

Schadewald asked what the protocol is for someone who may report a sexual assault to someone other than law enforcement, such as a crisis hotline or other county funded agency. Delain cannot speak to the protocols for other agencies, but feels there should be a way to be sure victims are put in touch with law enforcement. Delain said throughout the community, sexual assaults are taken very seriously and action is taken swiftly. The Sexual Assault Center through Family Services has a hotline.

DA Lasee said the Sexual Assault Center is not a mandated reporter as they are advocates in maintaining the victim's rights to make a decision regarding reporting. If someone decides they do wish to report an assault, the Sexual Assault Center will assist them in reporting. Other entities such as schools are mandated to report to law enforcement. Lasee referenced the SART protocol mentioned earlier by Delain and said all County agencies have officers that are specifically trained in responding to these cases. If a matter is not reported to law enforcement, law enforcement does not know about it and cannot respond to it. Lasee applauded Chief Smith's effort when he came forward and said if someone has been a victim of an assault, it should be reported to law enforcement, even if it is old. Lasee said there are statutes of limitations and if something happened prior to 1989 there would be some challenges, but for assaults that happened after that, there is a little more flexibility. A crime against a child under the age of 16 that happened after 1990 can still be reported and law enforcement will work with the DA's office to determine if it is within the statute of limitations and those cases can be prosecuted. The DA's office can and does successfully prosecute cases when there is a significant delay in reporting. They call in expert witnesses who have specific knowledge regarding delayed reporting and can provide information to a jury that informs them that it is not at all unusual for there to be a significant delay in reporting. Lasee encourages anyone who had previously reported a matter to a church and nothing was done to follow up and report it to law enforcement now. Law enforcement will have people that can handle this and the DA's office is happy to investigate cases that they know of, even if there has been a significant delay. The key is that law enforcement has to be made aware of it and that is the hard part.

Hoyer referenced the mandated reporting requirements of schools, and asked if private colleges have those same mandates. Lasee responded that sexual assaults on campus are strongly under reported both here and nationwide and this has been an area of emphasis for public universities. Lasee continued that their lead SANE (Sexual Assault Nurse Manager) works at UWGB and is very involved in that community to try to encourage reporting on campus and they have also worked with St. Norbert College to encourage reporting. Lasee said sexual assault has been a significant topic in the media for several years and he hopes that leads to an uptick in reporting. He noted there have been a number of cases brought forward on delayed reports as well as people coming forward that may not

have been comfortable doing that 20 years ago. Lasee stressed that these people will be heard and supported, although he cannot guarantee there will be prosecution or successful prosecution as that depends on the facts and evidence of each case. If someone comes forward and is not treated respectfully, that should be reported up the chain to the leaders of the departments and the DA's office. There is a very responsive group of leadership within law enforcement on these issues and sexual assault is very important to law enforcement. Sexual assault has been one of the focal points of Lasee's career and he feels they do a good job prosecuting these cases in the community. He stressed again that these incidents have to be reported to law enforcement.

Borchardt asked if there are any best practices that Brown County is not doing. Lasee responded that he is not aware of any and said the Community Coordinated Response Team referenced above meets on a regular basis and evaluates protocol and looks at best practices. He also referenced the Child Advocacy Center that interviews children and sends people to national training every year to keep up on best practices in responding to sexual assault. Borchardt asked if there is anything the County can do more of, such as PSAs on college campuses, to encourage reporting. Lasee said things like that could be done and it is important to know that law enforcement and the DA's office is prepared to be very responsive to sexual assault victims who come forward and report. In addition, the Sexual Assault Center is a great entity that will provide support and advocacy. There are wonderful resources in the community for those who reach out to utilize them and Lasee encouraged people to do so. In addition, Health and Human Services has representation on the Coordinated Community Response Team along with representatives of CPS and APS.

**Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**21. Communication from Supervisor Buckley re: Discussion and possible action regarding adding two members of the Board of Supervisors to the Supervised Release Committee.**

Buckley said he attended a neighborhood meeting recently regarding the placement of two sexual offenders on Liberty Street. There were a lot of questions and concerns from the public that there was no representation by City alders or County Supervisors at the meeting. Borchardt informed she was not made aware of the meeting until she saw it on the news.

Hemery said it is his belief that Board members could be added to the Supervised Release Committee. He provided a handout, a copy of which is attached, which includes statute excerpts for the Supervised Release Committee which sets forth the membership of the committee as follows: Human Services Department, State DHS, a local probation or parole officer, Corporation Counsel and someone from the land records office.

Hemery continued that when it was made known that these offenders were to be placed on Liberty Street, things somewhat exploded. He noted the County received an order that had already been in place for over a month and from the date the Court orders the County prepare a report; there is only 120 days to do all kinds of things. Hemery continued that this is an administratively created committee, however, there is no reason the County Board could not say they wish to have several Board members on the committee if that is their desire. He noted that a lot of counties pointed out that their Board members absolutely do not want to be on the Committee. The housing choices can be pretty limited and in this case the statutes require the landlord has to enter into a lease with DHS. The County then gets a list from the state of landlords that seem to be interested and the County has to contact the landlords to see if they are interested. In this case, only two landlords responded and, of those, only one met the criteria. Hemery continued that the state was pretty specific on who should be on the committee and he is not sure if they were shielding Board members from being in this incendiary environment or not, but he noted the language does not say Supervisors could not be added.

Buckley said there was a large group at the meeting that was concerned that there were not any elected officials on the committee. Since there are only little pockets throughout the municipalities that offenders can be placed in, the Liberty Street neighbors do not want their neighborhood becoming the neighborhood of choice for this because they do not have any representation by elected officials. Buckley continued that he suggested two Supervisors be added because if the proposed placement would be in a district of one of the Supervisors on the Committee, it



would be a precarious situation. Having Supervisors on the Committee would also show the residents there is a process to all this and people are not just being dumped in one area. He feels with two Board representatives on the Committee, one could be excused if a placement fell in their proposed neighborhood.

Buckley said the state does try to steer people to the committee meetings when they have them, but these are not regularly scheduled meetings and most members of the public would not know when they are being held. He also noted that the majority of the meetings are done in closed session which would be frustrating to the public as well. The people from the state did a very good job explaining things. Borchardt feels educating the public more on some of these crimes would be beneficial in terms of what can occur and would or could occur under supervision. Buckley said the State did a good job of that at the meeting, but the individuals were already placed and having Supervisors could probably work with local law enforcement to be sure these meetings are scheduled in a more timely fashion.

Hemery explained the placement process and said the court orders the release and placement and DHS is in charge of determining the placement. The County does a report to the state letting them know of the available options. Other than positing an agenda, there really is not notice sent to the public of the meetings. Buckley feels once the location is determined and the time frame for location is set, elected officials would be able to work to have a neighborhood meeting in a more timely manner. Hemery said his understanding is that the alderman originally said they did not want the neighborhood meeting, but then that changed at the last minute.

Borchardt noted the County's hands are tied with regard to placement because of state laws, but she definitely wants to hear complaints and concerns and do what she can to be sure her constituents know they are safe.

Schadewald suggested the chair of the supervised release committee have a directive that the corresponding County Board Supervisor for the district is notified of the meeting date and time. He does not feel it is necessary to put Supervisors on the committee because placements could be in locations that Supervisors on the committee do not represent.

Supervisor Lefebvre said as a City alder, she is notified when one of these offenders is going to be released into her district. Buckley said one of the reasons he brought this forward is because this is a County committee and therefore it would not be likely that City alders would be on the committee. There was a concern by the neighbors that they did not everyone released put in their neighborhood. He noted there could be reasons for putting people in a specific area, but without representation of the Board, there would not be anyone there to explain to the residents why things are being done the way they are. He also noted there were a lot of questions raised as to why these offenders are not placed in less populated areas. Hemery added that the reason City alders would be notified is because the placement location is located within the City boundaries. Borchardt said from conversations with people from Probation and Parole, Attic Correction and GBPD, it is getting harder and harder to find placements for these people.

Supervisor Nicholson asked why these people are not going to the Green Bay sexual predator board for review. Hemery responded that it is not part of the process. The people we are talking about here have been sentenced and served time and are now being released back into the community under supervision. There are incredibly strict requirements for the first year and these are placements in various rental properties. Eligible housing for these people has to meet all DHS requirements. Nicholson asked Hemery to look at the County zoning requirements for these cases.

Hemery pointed out that another reason things happened so quickly in this case is because of the penalties that can be imposed if the report is not in within the 120 day time frame. The penalty for each violation can be up to \$500,000 along with reasonable actual attorney fees and every day the report is late there is a new \$500,000 penalty.

Deslauriers informed that people in less populated areas share the exact same concerns as those who live in more populated areas when it comes to placement of offenders.

Buckley said it is interesting to note that the rent of the Liberty Street property is somewhere in the area of \$3000 per month.

Motion made by Supervisor Nicholson, seconded by Supervisor Schadewald to refer to Corporation Counsel to establish a policy of notification to relevant County Board Supervisor and also look into adding Supervisors to the Supervised Release Committee. Vote taken. MOTION CARRIED UNANIMOUSLY

Presentation

22. Presentation by Venture Architects regarding Jail Expansion and Medical Examiner Schematic Design.

*This Item was not taken up at this meeting.*

Closed Session

23. A. Open Session: Motion and Recorded Vote pursuant to Wis. Stats. Sec. 19.85(1) regarding convening into closed session for the following purpose: *Pursuant to Wis. Stat. § 19.85(1.)(e), the Committee shall convene into closed session to deliberate or negotiate the purchasing of public properties, the investing of public funds, or the conducting other specified public business, whenever competitive or bargaining reasons require a closed session, in particular, discussing confidential and security sensitive information, and viewing confidential and security sensitive documents, regarding the investing of public funds for the construction of the Jail expansion and of the Medical Examiner's Office.*

B. Convene into Closed Session: Pursuant to Wis. Stats. Sec. 19.85(1), the Committee shall convene into closed session for the following purpose: *Pursuant to Wis. Stat. § 19.85(1.)(e), the Committee shall convene into closed session to deliberate or negotiate the purchasing of public properties, the investing of public funds, or the conducting of other specified public business, whenever competitive or bargaining reasons require a closed session, in particular, discussing confidential and security sensitive information, and viewing confidential and security sensitive documents, regarding the investing of public funds for the construction of the Jail expansion and of the Medical Examiner's Office.*

C. Reconvene in Open Session: The Committee shall reconvene into open session for possible voting and/or other action with respect to the closed session item mentioned above.

*This Item was not taken up at this meeting.*

Other

24. Audit of bills.

Motion made by Supervisor Borchardt, seconded by Supervisor Schadewald to acknowledge receipt of the bills. Vote taken. MOTION CARRIED UNANIMOUSLY

25. Such other matters as authorized by law. *None.*

26. Adjourn.

Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to adjourn at 5:32 pm. Vote taken. MOTION CARRIED UNANIMOUSLY

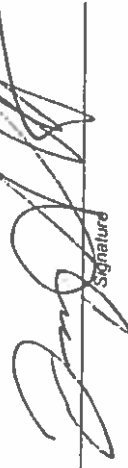
Respectfully submitted,

Therese Giannunzio  
Administrative Specialist

**PUBLIC SAFETY DIVISION  
2018 TO 2019 CARRYOVER FUNDS**

| <u>DEPARTMENT</u>                                       | <u>ACCOUNT #</u>     | <u>PURPOSE</u>   | <u>AMOUNT<br/>REQUESTED</u> |
|---|----------------------|--|-----------------------------|
| <u>Circuit Courts</u>                                   |                      |  |                             |
| Outlay - Other (\$5,000+)                               | 100.010.003.6110.100 | Completion of Court Commissioner front counter security glass from 2018 Contingency Fund | <u>5,795</u>                |
| <u>Medical Examiner</u>                                 |                      |  |                             |
| Vehicle Parts/Maintenance                               | 100.014.001.5307.200 | Completion of work on medical examiner vehicle   | <u>4,000</u>                |
| <u>District Attorney</u>                                |                      |  |                             |
| Expert Witness  | 100.024.001.5782.100 | Completion of cases in 2019 needing expert witnesses                                     | <u>7,330</u>                |
| <u>Emergency Communications Upgrade Capital Project</u> | 431.013.XXXX         | Continuation of project implementation   | <u>737,749</u> *estimated   |
| <u>Law Records Management System</u>                    | 433.074.XXXX         | Continuation of project implementation   | <u>39,732</u> *estimated    |
| <u>Sheriff's Protects - Video Surveillance</u>          | 434.074.470.XXXX     | Continuation of project implementation   | <u>14,388</u> *estimated    |

Approved by County Executive:



3/6/19  
Date

## BROWN COUNTY SHERIFF'S OFFICE

### Key Factor Report

For Feb. 2019 Public Safety Meeting - Data through Feb. 2019 (unaudited)

#### Jail Data:

|  |       |
|--|-------|
| Average Daily population (including held in other counties and on EMP) - Current Month | 759.4 |
| Average Daily population (including held in other counties and on EMP) - Year to Date  | 770.3 |
| Average Daily population prior year - Current month                                    | 807.7 |
| Average Daily population prior year - Year to Date                                     | 780.6 |
| Average Daily number housed in other counties - Current month                          | 10.9  |
| Average Daily number housed in other counties - Year to Date                           | 12.8  |

*Because books are still open for Jan. & Feb. 2019, no data included below at this time*

#### Overtime Data:

|  |     |
|--|-----|
| Total Sheriff's Office overtime - Current month                    | n/a |
| Total Sheriff's Office overtime - Year to Date                     | n/a |
| Total Sheriff's Office overtime - prior year - current month       | n/a |
| Total Sheriff's Office overtime - prior year (2017) - Year to Date | n/a |
| Increase / (decrease) 2017 to 2018 Year to Date                    | n/a |
| Increase / (decrease) percent 2017 to 2018 Year to Date            | n/a |

## **County Jailers Designated as Having Protective Status**

The following counties classify their Jailers as meeting the three criteria and having protective status  
(Note: This info is not guaranteed to be accurate as it has not been updated in several months):

1. Washburn
2. St. Croix
3. Juneau
4. Door
5. Winnebago
6. Sauk
7. Crawford
8. Iowa
9. Lafayette
10. Dane
11. Green
12. Rock
13. Jefferson

The other 58 counties, including Brown County, do not classify their Jailers as having protective status.

The one remaining county, Menomonie County, does not have a jail.

| Recipient              | Delivery | Read                    |
|------------------------|----------|-------------------------|
| Streckenbach, Troy J.  |          | Read: 3/6/2019 2:01 PM  |
| Sugden, Sarah A.       |          | Read: 3/6/2019 12:07 PM |
| VanderLeest, John A.   |          |                         |
| Wallerius, Michelle K. |          |                         |
| Weininger, Chad J.     |          |                         |
| Zeller, Paul D.        |          | Read: 3/6/2019 12:10 PM |

All:

IN ORDER TO AVOID A WALKING QUORUM, PLEASE DO NOT HIT 'REPLY ALL' IF RESPONDING TO THIS EMAIL.

If you'd like to respond to me or another, then please just respond directly.

At a conference call yesterday with the WI Department of Employee Trust Funds (ETF), ETF notified Brown County that it was recently contacted by Brown County Jailers who have requested to have their formerly 'on-hold' Appeals move forward – these appeals are in regard to the determination that Jailers do not meet the three criteria necessary to have protective status (please see attached FAQs, and two Decisions). There are currently 26 appeals to litigate, but it is possible the cases may be consolidated into one or several representative cases. ETF will now contact the WI Department of Administration (DOA) and let them know of the Jailers' decision to move forward with their Appeals, and the DOA will then assign an Administrative Law Judge (ALJ) to hear the Jailers' Appeals – we expect that an ALJ will be assigned within approximately one month.

As is the case in lawsuits in general (e.g., the Brown County Taxpayers Association Lawsuit re the Sales and Use Tax), until this Jailer litigation is resolved, **Board and Committee discussions re this issue should only be had in closed session.** Also, **any questions/comments/concerns re this issue received by Department Heads should be forwarded to corp counsel for review and response – Department Heads may state that, "Due to this issue being in litigation posture, we have been directed to refer any and all communications regarding it to Corporation Counsel."** County Supervisors may also refer related questions to corp counsel for review and response if they so desire.

This email in no way limits a board's or committee's authority to receive public comments as Agendas allow, but any board or committee *discussions* regarding the issues in these 26 active Appeals should only occur in closed session.

Attached to this email is information that is public information and that has previously been distributed to several of you – I am hopeful the attached will provide answers to questions you may have, but if questions remain, then they should be addressed in closed session.

Thank you for your time and consideration regarding this matter.

Dave

David P. Hemery, Brown County Corporation Counsel  
WI Bar Number: 1033291

**Phone:** (920) 448-4006

**Fax:** (920) 448-4003

**Mailing Address:** P.O. Box 23600, Green Bay, WI 54305-3600

**Physical Address:** 305 E. Walnut St., Suite 680, Green Bay, WI 54301

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## Frequently Asked Questions

July 7, 2016

### Appeal: Employment Category Change (Jailers)

The information below pertains to an appeal by a number of employees working in county jails throughout the state (jailers) of Wisconsin. The appeal was based on their employer's determination that they should be reported to the Wisconsin Retirement System as General Category employees instead of protective category employees with Social Security. Of the five representative jailers involved in the appeal, the Department of Employee Trust Funds Board (Board) concluded that all five were properly categorized as General Category employees.

#### 1. What are the WRS employment categories?

The WRS has four employment categories:

##General,

##Executive/Elected,

##Protective Occupation Participant with Social Security,

##Protective Occupation Participant without Social Security (most firefighters).

#### 2. Who decides the applicable employment category for an individual employee?

Employers are responsible for determining an individual employee's employment category. Generally, an employee may directly appeal an employer's employment category determination to the ETF Board.

#### 3. What is the appeals process?

ETF offers an administrative appeal process. Employees file an appeal by writing a letter or submitting a completed Appeal Form (ET-4938) to the Appeals Coordinator at ETF. A brochure entitled Employee Trust Funds' Administrative Appeal Process (ET-4943) is available for more information.

#### 4. Why did some jailers appeal their employer's employment category determination?

Beginning in 2012, certain Wisconsin counties changed the employment category of jailers employed by those counties from Protective to General. As a result, many of those jailers filed an appeal with ETF to challenge that change, based on their belief that they should be reported to the WRS as Protective category employees.

#### 5. What is the standard an employer must use in determining whether an employee should be reported to the WRS as a Protective category or as a General category employee?

To be reported as a WRS protective, state law requires that an employee's principal duties must involve the following:

##Active law enforcement or active fire suppression or prevention;

##Frequent exposure to a high degree of danger or peril; and



##A high degree of physical conditioning.

The ETF Board has previously interpreted "principal duties" to require that 51% or more of the employee's duties be spent in active law enforcement. "Active law enforcement" includes being actively, currently and directly involved in detecting and preventing crime, and enforcing laws or the ordinances of a participating employer.

Wis. Stat. §40.02(48)(am) lists specific positions typically qualifying as protectives, such as police officers, firefighters and deputy sheriffs. However, bearing one of those titles does not automatically confer protective status. An employer must still evaluate whether at least 51% of an employee's duties meet the three criteria above.

6. Why did those counties change the WRS employment category of their jailers from Protective to General?

As noted above, it is an employer's responsibility to determine the proper WRS employment category in which to enroll an employee. Based on evidence presented by the county involved in the current administrative appeal, the county did not believe the jailers duties met the definition of protective because 51% of their time was not spent on active law enforcement, their positions did not expose them to a high degree of danger or peril and their positions did not require a high degree of physical conditioning.

7. What happened after the counties changed their employment category?

Many of the jailers submitted appeals to ETF. Five of those cases were chosen by the parties as representative of the different types of position descriptions and varying duties. The position titles, as provided by their employer, were: (1) Jail Lieutenant, (2) Jail Sergeant, (3) Jailer, (4) Transit Officer and (5) Huber Deputy.

A hearing was held before an administrative law judge from May 18-21, 2015, and May 28-29, 2015. The parties submitted written briefs, the last of which was received on November 7, 2015. The administrative law judge issued a proposed decision, including preliminary findings and conclusions of law, on January 6, 2016. The ETF Board heard the five cases on March 24, and issued a written decision on July 5.

8. What did the ETF Board decide?

The ETF Board decided that all five jailers involved in the appeal were properly categorized as generals for three reasons:

##The evidence did not support the conclusion that the five spent 51% or more of their time engaged in active law enforcement;

##They offered no evidence that their work involved frequent exposure to a high degree of danger or peril; and

##They did not offer evidence that their work required a high degree of physical conditioning.

The ETF Board further noted that the test for being a protective is a strict one and cannot be met by an employer's decision to have classified the employee as a protective in the past.

A copy of the ETF Board decision may be found [here](#). The names of the parties have been redacted because state law, specifically Wis. Stat. §40.07, prohibits the release of personal information related to WRS members.

9. Can the five jailers appeal the ETF Board decision?

Yes. The five jailers have 30 days from July 5 (the date the decision was mailed to the parties) to file an appeal in Dane County Circuit Court. A Circuit Court decision would then be subject to further appeal in the Court of Appeals.



While ETF cannot predict how a Circuit Court may view this case, the ETF Board decision cited its long-standing interpretation of Wis. Stat. §40.02(48) in arriving at its conclusion. When a state agency applies a long-standing interpretation of its own statutes to a given case, a circuit court typically gives great weight deference to that interpretation. To the extent that previous ETF Board decisions on this issue have been appealed, the Court of Appeals has affirmed the Board's decisions.

10. Does the ETF Board decision apply to the other jailers who filed appeal forms but who were not one of the five jailers directly involved in this case?



The five jailers involved in the current appeal were chosen by the parties as being representative of jailers throughout the state because of their varying position descriptions. As a result, the ETF Board decision applies insofar as it provides information on how the Board may evaluate whether a given position meets the requirements to be categorized as a WRS protective. As noted above, in the current five cases, the Board found that the jailers did not present evidence that at least 51% of their time was spent engaged in active law enforcement, that their positions exposed them to a high degree of danger or peril, and that their positions required a high degree of physical conditioning.

Please contact ETF at 1-877-533-5020 or 608-266-3285 (local Madison) with additional questions or concerns.

STATE OF WISCONSIN  
EMPLOYEE TRUST FUNDS BOARD

|  |   |
|--|---|
| In re appeal of:<br> and<br> | NOTICE OF FINAL DECISION<br><br>Appeal Nos. 2013-007-ETF, 2013-043-ETF,<br>2013-049-ETF, 2013-050-ETF and<br>2013-054-ETF |
|--|---|

TO:


On this date, on behalf of the Employee Trust Funds Board, I am hereby mailing to each of the above-named parties an attached copy of the final decision of the Board in the above captioned matter. Please see the notice of rights below.

Dated and mailed this 5th day of July, 2016.

FOR THE BOARD:

By: Kim C. Esselman  
Kim C. Esselman  
Appeals Coordinator

NOTICE OF RIGHT TO PETITION FOR REHEARING  
AND TO PETITION FOR JUDICIAL REVIEW

A party has the right to petition the Board for a rehearing pursuant to s. ETF 11.14, Wis. Adm. Code. A written petition for rehearing, naming the Board as respondent, may be made within 20 days of the date of this notice. A rehearing may only be granted on the basis of material error of fact or law, or the discovery of new evidence which could not have been previously discovered by due diligence and is sufficiently strong to reverse or modify the Board's decision. A rehearing petition must describe the particular alleged errors or the new evidence which is the basis for the request and cite any supporting legal authorities.

Judicial review of the Board's final decision is by an action for certiorari in the Dane County Circuit Court commenced within 30 days of the date of this notice, or the notice of the Board's decision on a petition for rehearing, as provided in s. 40.08(12), Wis. Stats. The Board must be named as the respondent or defendant. The above-named addressees, to whom this notice is sent, are the parties to the underlying proceedings.

STATE OF WISCONSIN  
EMPLOYEE TRUST FUNDS BOARD

In the Matter of the Appeals of

Appeal Nos.

██████████  
██████████  
██████████  
██████████  
██████████

2013-007-ETF  
2013-043-ETF  
2013-049-ETF  
2013-050-ETF  
2013-054-ETF

FINAL DECISION AND ORDER

1. On March 22, 2013, the Department of Employee Trust Funds received an appeal on behalf of ██████████, ██████████, ██████████, ██████████, and ██████████.

2. By letter dated March 7, 2014, the appeals were referred to the Division of Hearings and Appeals for hearing, as provided by Wis. Admin. Code §§ ETF 11.01 and 11.04(1). The Division's authority to serve as the Board's hearing examiner is conferred by Wis. Stat. § 227.43(1m).

3. A hearing was held May 18–21 and 28–29, 2015, Jeffrey D. Boldt, administrative law judge, presiding. The parties submitted written briefs, and the last filing was received on November 7, 2015.

4. The issue to be decided is whether the appellants should be classified as protective occupation participants under Wis. Stat. § 40.02(48)(a) since December 23, 2012, when their employer began treating them as general occupation employees.

FINDINGS OF FACT

5. This case involves the appeals of five individuals who work for ██████████ County in the ██████████ County Jail. The parties agreed to proceed with the case through a combined hearing. All have been employed by the County for all times relevant to these proceedings. ██████████ is employed as a Jail Lieutenant, ██████████ as a Jail Sergeant, ██████████ as a

Jailer, [REDACTED] as a Transport Deputy, and [REDACTED] as a Huber/Electronic Monitoring Deputy.

6. Each of the appellants has, for most of the tenure of his employment with the County, been continuously reported by the County to the Department of Employee Trust Funds (Department) as a protective occupation employee.

7. Every employee who has held the positions of [REDACTED] County Jail Lieutenant, Jail Sergeant, Jailer, Transport Deputy, and Huber/Electronic Monitoring Deputy has been continuously categorized as a protective occupation participant since sometime in the late 1980s.

8. On or about December 12, 2012, the County notified the appellants that it was changing their employment classification for Wisconsin Retirement System (WRS) purposes from protective occupation to general employee, effective December 23, 2012.

9. Employees have a right of direct appeal to the Board regarding an employer's classification of their employment status. The appellants each sought review of [REDACTED] County's decision to reclassify them. (R. 8393-8415.)

[REDACTED]

10. [REDACTED] testified that he has been employed as the jail lieutenant in [REDACTED] County for sixteen years and is second in command in the jail operation. He is part of the command staff and is one of two supervisors in the jail.

11. [REDACTED] job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. In a survey, he described the major purpose and objectives of his job: "To ensure the safe and effective management of all jail operations. To comply with all State and Federal guidelines while protecting the Public and the rights of the inmate population." [REDACTED] listed his "operational responsibilities" in the jail to include supervising the jail division, reviewing jail staff documents, enforcing inmate policies and procedures, preparing jail division payroll, developing and maintaining the jail division schedule, and completing annual performance evaluations.

12. [REDACTED] testimony confirmed the supervisory nature of his position. [REDACTED] testified that his supervisory responsibilities include overseeing the work of the jail staff and conducting evaluations of the staff. He testified about his "typical day:"

Q. Can you walk us through a typical day, tell us what your typical duties would be, what you do during the day, try to list all the various duties that might be included within a typical day.

A. Well, it can vary from day to day. But typical would be to check with booking, see who came in during the night. Why they're being held. Check with medical. See if there's any inmates with current health issues that need to be addressed. Review reports. Go over scheduling. Check with the staff. I help out with court escorts, if staff is not available to do that. Meet with the captain over new policies. Talk about procedural changes. Attend meetings for different projects we have going on.

(R. 1088-89.)

13. [REDACTED] testified that he also "occasionally" performs jailer duties such as filling in shifts as a jailer, conducting rounds, and distributing meals.

14. [REDACTED] explained how an investigation would be conducted if contraband were discovered in the jail and how charges would be forwarded to the District Attorney if the case had merit. He testified it is "very seldom" that he is involved in any actual arrests or referrals of charges to the District Attorney.

15. [REDACTED] admitted that his job description provides an accurate description of his job duties, with the limited exception of those duties that have been transferred to others. [REDACTED] offered no testimony about the percentage of time he spends on any one activity.

16. [REDACTED] provided no evidence that his job involves frequent exposure to a high degree of danger or peril or that it requires a high degree of physical conditioning.

██████████

17. ██████████ is a supervisor on the second shift. He testified that he is responsible for overseeing the work of the jail staff and ensuring that it is done properly.

18. ██████████ job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. ██████████ acknowledged that he performs the duties described in his job description, which include supervision and direction of the workforce, preparing shift schedules, ensuring adherence to procedures and schedules for meals, laundry and cleaning, ensuring that rounds are completed, inspections of staff, equipment and documentation of activities, performance evaluation of employees, and training of employees. He testified that his job description and the post order about the jail sergeant position reflect his job responsibilities.

19. ██████████ testified about occasional activities that are more similar to what police officers do, such as investigating potential criminal misconduct in the jail, investigating fights that have occurred in the jail, and requesting arrest warrants for escapees. ██████████ testified that he responded to one incident in which the circuit court judge purportedly called the jail for assistance in dealing with a disruptive person; he could remember only one such incident. ██████████ testified that he was involved in a drug bust in the church in the jail "quite a while ago." ██████████ testified to another incident in which an out-of-control inmate damaged a cell. ██████████ provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

20. ██████████ provided no evidence that his job involves frequent exposure to a high degree of danger or peril or that it requires a high degree of physical conditioning.

██████████

21. ██████████ has been employed as a jailer with ██████████ County for sixteen years. His job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. ██████████ testified that his job description, marked as Exhibit 45, lists the essential duties and responsibilities of his position. That description describes booking inmates, making rounds, maintaining discipline, conducting surveillance of inmates, monitoring and operating jail equipment, controlling

access to the jail, interpreting bond conditions and commitment orders, maintaining communication between shifts with other jail staff, completing required paperwork, providing for medical attention needed by the inmates, assisting with the food service program, delivering food and linens, handling visitors, maintaining Huber inmate compliance, and transporting inmates.

22. [REDACTED] testified about occasional work that is more similar to what a police officer does. [REDACTED] testified that he was a member of the SWAT team for 13 years, but jailers are no longer allowed to participate on SWAT. He was the commander of the Correctional Emergency Response Team, and recalled a riot in the jail 11 years ago, but it has not been called out for the past five years. [REDACTED] testified to investigating some crimes in the jail at times during his sixteen-year career, including theft, obstructing, resisting, disorderly conduct, battery to an inmate, and battery to law enforcement. [REDACTED] testified that he occasionally listens to inmate phone calls. [REDACTED] provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

23. [REDACTED] provided no evidence that his job involves frequent exposure to a high degree of danger or peril and requires a high degree of physical conditioning.

[REDACTED]

24. [REDACTED] has been employed as [REDACTED] County's transit officer for 15 years. On occasion, he fills in and does the duties of a jailer.

25. [REDACTED] duties transporting inmates generally do not entail currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. As set out in the post order for his position, [REDACTED] duties and responsibilities include coordinating all incoming orders of the court for transportation of all inmates, patients and others for scheduled court appearances; transporting inmates; processing all extraditions to and from [REDACTED] County, including processing all paperwork associated with the extradition; conducting fleet inspections to make sure all cars are serviced and equipped to department standards; and assisting the Huber officer with Huber checks and tasks.

26. [REDACTED] described the principal duties of his position:



Q Right. And your job is to take, as at least in the case of an inmate, to take someone who's in custody, and maintain them in custody in a motor vehicle from point A to point B, whatever point [B] may be?

A. My job is to bring the prisoner from point A to point B.

(R. 1066.) [REDACTED] also performs jailer duties when needed and does court escort work, including using an electronic shock device.

27. [REDACTED] testified that his job may require him to engage in activities that are similar to those performed by a police officer. If there is an escape or the transportee commits a crime or rule violation, [REDACTED] conducts an investigation. He testified that if an arrest is warranted, he executes the arrest. [REDACTED] provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

28. [REDACTED] provided no evidence that his job involves frequent exposure to a high degree of danger or peril. While the transport environment is less controlled than the jail, his testimony did not support a finding that he is frequently exposed to a high degree of danger. He offered no testimony that his position requires a high degree of physical conditioning.

[REDACTED]

29. [REDACTED] has been employed as the Huber Deputy in [REDACTED] County since 2001. [REDACTED] supervises inmates who are granted Huber work release privileges, as well as inmates placed on electronic monitoring.

30. [REDACTED] duties running the Huber program generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. As described in the relevant post order (Jt. Exh. 9:41), [REDACTED] duties and responsibilities include managing the Huber and electronic monitoring program; coordinating and conducting transport and court scheduling in the absence of the transport officer; adhering to all written Huber ordinances, policies and procedures; maintaining a weekly Huber roster; periodically checking on Huber inmates in the field; answering voicemail and return phone calls; investigating Huber and electronic monitoring client complaints and violations; conducting discipline hearings for Huber violations; reviewing requests for child care; reviewing Huber transfers; approving Huber deviations; reviewing requests for electronic monitoring; making home visits

on electronic monitoring clients as needed; and maintaining electronic monitoring equipment.

31. Although he enjoys more autonomy in the field than the jailers in the jail, [REDACTED] offered no testimony regarding the percentage of time he spends on any one activity. The evidence does not support a finding that he spends 51 percent or more of his time actively detecting or preventing crimes committed by these inmates.

32. [REDACTED] provided no evidence that his job involves frequent exposure to a high degree of danger or peril and that it requires a high degree of physical conditioning. The offenders qualifying for Huber are the least dangerous offenders. [REDACTED] only altercations with offenders occurred in the jail, not with offenders on release. As to the physical demands of the job, [REDACTED] did not say that a high degree of physical conditioning was required; instead, he indicated that "you just have to be in – I would say in shape or conditioned." (R. 1200.)

#### CONCLUSIONS OF LAW

33. The appellants seek classification as protective occupation participants. Wisconsin Stat. § 40.02(48)(a) defines "protective occupation participant:"

[A]ny participant whose principal duties are determined by the participating employer, or, subject to s. 40.06(1)(dm), by the department head in the case of a state employee, to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.

The Board has interpreted "principal duties" to require that 51 percent or more of the employee's duties to be spent in active law enforcement. *See Mattila v. Emp. Trust Funds Bd.*, 2001 WI App 79, ¶¶ 14 n.3 & 15, 243 Wis. 2d 90, 626 N.W.2d 33. The Board has defined "active law enforcement" to include being "actively, currently and directly involved in detecting and preventing crime and enforcing laws or the ordinances of a participating employer." *Mattila*, 243 Wis. 2d 90, ¶ 14 n.3.

34. Because protective occupation participants can retire at age 50 and enjoy other significant employment benefits over general occupation employees, the test is a strict one. The Wisconsin court of appeals recognized that the designation is limited to a "narrow class" of employees who meet

"stringent standards." *Cty. of La Crosse v. WERC*, 170 Wis. 2d 155, 167, 488 N.W.2d 94 (Ct. App. 1992), *rev'd on other grounds*, 180 Wis. 2d 100, 508 N.W.2d 9 (1993).

35. An employee cannot qualify for protective occupation status simply through his employer's decision to so classify him in the past. The employee's job duties must meet the statutory definition of active law enforcement. *Mattila*, 243 Wis. 2d 90, ¶¶ 14-15. Just as an employee cannot definitively qualify as a protective occupation participant by having his employer deputize him, he also cannot definitively achieve that status by reaching an agreement with his employer to so report him.

36. The question of whether jailers meet the three-part requirements of Wis. Stat. § 40.02(48)(a) has been litigated on a number of occasions, including in *Mattila*. As the record reflects (R. 243-479), this Board has consistently held over a number of decades that jailers do not meet the definition of protective occupation participants. The Board has concluded that 51 percent of their duties do not consist of active law enforcement.

37. To the extent these cases were appealed, the court of appeals has affirmed the Board's decisions. The court of appeals decision in *Mattila* does not squarely address the issue because the jailers in that case decided to rely on their status as deputy sheriffs, not their actual job duties. *Mattila*, 243 Wis. 2d 90, ¶¶ 14-15 & n.3. The court of appeals did reach the question of whether jailers with duties similar to those of [REDACTED], [REDACTED], and [REDACTED] in *Hoermann v. Employee Trust Funds Board*, 216 Wis. 2d 112, 573 N.W.2d 899 (Ct. App. 1997), in an unpublished opinion. It concluded that the jailers' principal duties did not constitute active law enforcement because they did not devote at least 51 percent of their time to active law enforcement.

38. Further, the appellants must satisfy the second and third parts of the test. If an employee meets the principal duties test, he still must show that his job entails frequent exposure to a high degree of danger and peril and requires a high degree of physical conditioning. Wis. Stat. § 40.02(48)(a). This is a fact-specific inquiry. In prior appeals by jailers, the Board has reached varying conclusions, depending on the facts presented, about whether the jobs met these tests. *Compare* R. 477-47 and 292 (concluding jailers did not meet those requirements) *with* 274 (concluding that they did).

39. [REDACTED], [REDACTED], and [REDACTED] are jailers or jailer supervisors for [REDACTED] County. They make out no case that their duties are meaningfully different from those of the earlier jailer appellants.

40. Like the appellants in the consolidated 2015 appeals of local airport workers, 14-ETF-008 -011, the appellants contend that it is the qualitative importance of their duties, not the quantity of time, that matters. (R. 81; 113; 116.) As this Board has previously concluded, this reading does not square with *Mattila*. The "principal duties" test is based on the way an employee spends his or her time, not the qualitative importance of a particular duty.

41. The appellants also suggest that crime detection and prevention is built into everything they do. [REDACTED] for example, testified that custodial duties such as delivering laundry, medication, and food provide an opportunity to see whether inmates are engaged in any illegal activity—so that, in a general way, that task is "law enforcement." The appellants' premise reads the statutory definition too broadly. To be principally engaged in "active law enforcement," the employee must primarily be engaged in actively detecting or preventing crime. Delivering laundry, food and medication may provide an opportunity to enforce the law at times, but that is not the primary purpose of the role, and it is not active law enforcement. There are many professions, such as the district attorney investigator position at issue in the *Triolo* appeal, that involve enforcing the law in a broader sense. But it is only a narrow band of active law enforcement positions that qualify for classification as protective occupation participants.

42. Even if the appellants could meet the 51 percent requirement, they do not satisfy two other requirements of the definition.

43. First, the appellants' duties do not expose them to "frequent" exposure to a high degree of danger or peril. The appellants provide evidence that sometimes they are exposed to danger, and testified to episodic moments of danger. But that does not mean their exposure is "frequent" and of a "high degree."

44. Second, the appellants concede that the position description requires no physical conditioning, much less a "high degree" of physical conditioning.

45. In theory, a jailer could present a case that the duties of his position are significantly different from those of the jailer appellants in the Board's past cases. But [REDACTED], [REDACTED], and [REDACTED] do not do this. For this Board to find that [REDACTED], [REDACTED], and [REDACTED] are protective occupation participants, it would have to abandon the position it has taken regarding

jailers for the last twenty years and essentially ignore its own definition, accepted in *Mattila*, of active law enforcement.

46. [REDACTED], [REDACTED], and [REDACTED] failed to demonstrate that they meet the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

47. [REDACTED] says his job is different from that of other jailers because he spends most of his time transporting prisoners from place to place, including doctor appointments, other jail facilities, and hospitals. [REDACTED] does not persuasively explain how the daily work of transporting prisoners is "active law enforcement" within the meaning of the Board's definition. [REDACTED] duties are primarily custodial, ensuring the safe transport of inmates and others in the community. [REDACTED] failed to show that 51 percent or more of his time is spent in active law enforcement.

48. Further, like [REDACTED], [REDACTED], and [REDACTED], [REDACTED] also fails to meet either the exposure to danger or high degree of physical conditioning requirement. [REDACTED] job may be somewhat more dangerous than the jailers' because he is on the road with offenders rather than just the controlled environment of the jail. But he did not testify to being frequently exposed to a high degree of danger or peril. He testified to no requirement of a high degree of physical conditioning.

49. The hearing examiner's proposed decision would find that [REDACTED] meets the requirements for a protective occupation participant because [REDACTED] carries a weapon and wears a uniform like a police officer; is responsible for making sure that individuals do not escape; and operates "independently in the field." Those factors do not correlate with the definition of active law enforcement. Ensuring that inmates do not escape is a core duty shared by all jailers, who, as discussed above, have never been treated as engaged in active law enforcement. The independence of an employee is not what defines him or her as engaging in active law enforcement. And whether [REDACTED] uniform looks like those worn by police officers is irrelevant to whether he engages in particular types of duties. The hearing examiner also did not analyze the danger or physical conditioning requirements as applied to [REDACTED] position.

50. The retracted expert opinion of McRoberts relied on by the hearing examiner suffers from the same deficiencies: it relies on irrelevant criteria, like the employee's independence; makes no analysis of the dangerousness and

physical conditioning aspects of the job; and fails to assess how much of the employee's day is spent on active law enforcement.

51. [REDACTED] failed to demonstrate that he meets the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

52. [REDACTED] the Huber officer for the County, argues that his job is also meaningfully distinct from other jailers. While [REDACTED] spends some time investigating offenders' activities and monitoring them using GPS and alcohol-monitoring devices, [REDACTED] also failed to show that 51 percent or more of his time is spent engaged in active law enforcement. In the course of running the Huber program, [REDACTED] responsibilities are primarily administrative and supervisory, overseeing Huber inmates' needs while on work release and ensuring their compliance with the program's requirements.

53. Further, [REDACTED] fails to meet either the exposure to danger or high degree of physical conditioning requirement. [REDACTED] did not testify that he is "frequently" exposed to a "high degree of danger or peril." As the County pointed out, the offenders qualifying for Huber are the least dangerous offenders. [REDACTED] only altercations with offenders occurred in the jail, not with offenders on release. As to the physical demands of the job, [REDACTED] did not say that a high degree of physical conditioning was required.

54. In concluding that [REDACTED] met the requirements to be a protective occupation participant, the hearing examiner considered that [REDACTED] works independently in the field; as discussed above, that is not part of determining whether he is engaged in active law enforcement. The hearing examiner also noted that [REDACTED] may occasionally be called upon to assist police officers with an arrest, but such occasional duties cannot meet the 51 percent test; the County also asserts that even this assistance would occur while he is off duty. The hearing examiner did not analyze whether [REDACTED] spent 51 percent or more of his time engaged in duties that constitute active law enforcement. The hearing examiner also did not analyze whether [REDACTED] satisfies the frequent exposure to a high degree of danger and the physical conditioning requirement prongs of the test.

55. [REDACTED] failed to demonstrate that he meets the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

#### VARIATIONS FROM HEARING EXAMINER'S PROPOSED FINAL DECISION

1. The final decision discusses facts relevant to the danger/peril and physical conditioning requirements more thoroughly. Unsupported or irrelevant facts have been deleted.

2. The final decision addresses the appellants' argument that it the qualitative importance of the employee's duties, not the quantity of time, that determines whether he meets the principal duties test. The final decision also addresses their argument that daily jailer duties, such as making rounds, are active law enforcement because they may provide opportunities to detect or prevent crime and enforce the law.

3. The final decision addresses the appellants' argument that they are entitled to continue to be classified as protective participants because that is how the County classified them originally.

4. The final decision deletes conclusions that it was reasonable for the County to have classified the jailers differently in the past. That is irrelevant to the conclusions in these appeals. In theory, it is possible that a jailer would have significantly different duties than the jailers in past appeals, requiring a different outcome. But these jailers did not present such a case.

5. The final decision discusses the governing statute and case law more thoroughly.

6. The final decision concludes that [REDACTED] and [REDACTED] do not meet the definition of a protective occupation participant.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the reclassification by [REDACTED] County as to all five appellants is AFFIRMED.

Dated as of the 24th of March, 2016.

EMPLOYEE TRUST FUNDS BOARD:

Wayne Koessl  
Wayne Koessl, Chair



PARTIES FOR PURPOSES OF JUDICIAL REVIEW

Pursuant to Wis. Admin. Code §§ ETF 11.03(7) and 11.12(1)(c), the following persons or entities participated in and are certified as PARTIES to this appeal:

[REDACTED]

by

Attorney [REDACTED]  
[REDACTED]

[REDACTED] County, by

Attorney [REDACTED]  
[REDACTED]



STATE OF WISCONSIN  
EMPLOYEE TRUST FUNDS BOARD

|   |   |
|---|---|
| In re appeal of:  | NOTICE OF FINAL DECISION  |
| BLAINE PROUE, CURTIS DUTTON,<br>JEFFREY HANZLIK, ROBERT JENSEN and<br>DANIEL MODL | Appeal Nos. 2013-007-ETF, 2013-043-ETF,<br>2013-049-ETF, 2013-050-ETF and<br>2013-054-ETF |

TO:

ROGER PALEK  
WISC PROFESSIONAL POLICE ASSOC  
660 JOHN NOLEN DR STE 300  
MADISON WI 53713

DANIEL BOROWSKI  
VON BRIESEN & ROPER SC  
411 E WISCONSIN AVEN STE 1000  
MILWAUKEE WI 53202-4427

DIANA FELSMANN  
DEPT OF EMPLOYEE TRUST FUNDS  
P O BOX 7931  
MADISON WI 53707-7931

On this date, on behalf of the Employee Trust Funds Board, I am hereby mailing to each of the above-named parties an attached copy of the final decision of the Board in the above captioned matter. Please see the notice of rights below.

Dated and mailed this 5th day of July, 2016.

FOR THE BOARD:

By: Kim C. Esselman  
Kim C. Esselman  
Appeals Coordinator

NOTICE OF RIGHT TO PETITION FOR REHEARING  
AND TO PETITION FOR JUDICIAL REVIEW

A party has the right to petition the Board for a rehearing pursuant to s. ETF 11.14, Wis. Adm. Code. A written petition for rehearing, naming the Board as respondent, may be made within 20 days of the date of this notice. A rehearing may only be granted on the basis of material error of fact or law, or the discovery of new evidence which could not have been previously discovered by due diligence and is sufficiently strong to reverse or modify the Board's decision. A rehearing petition must describe the particular alleged errors or the new evidence which is the basis for the request and cite any supporting legal authorities.

Judicial review of the Board's final decision is by an action for certiorari in the Dane County Circuit Court commenced within 30 days of the date of this notice, or the notice of the Board's decision on a petition for rehearing, as provided in s. 40.08(12), Wis. Stats. The Board must be named as the respondent or defendant. The above-named addressees, to whom this notice is sent, are the parties to the underlying proceedings.

STATE OF WISCONSIN  
EMPLOYEE TRUST FUNDS BOARD

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| In the Matter of the Appeals of | Appeal Nos.  |
|---------------------------------|--------------|
| Blaine Proue                    | 2013-007-ETF |
| Curtis Dutton                   | 2013-043-ETF |
| Jeffrey Hanzlik                 | 2013-049-ETF |
| Robert Jensen                   | 2013-050-ETF |
| Daniel Modl                     | 2013-054-ETF |

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FINAL DECISION AND ORDER

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1. On March 22, 2013, the Department of Employee Trust Funds received an appeal on behalf of Curtis Dutton, Blaine Proue, Jeffrey Hanzlik, Robert Jensen, and Daniel Modl.

2. By letter dated March 7, 2014, the appeals were referred to the Division of Hearings and Appeals for hearing, as provided by Wis. Admin. Code §§ ETF 11.01 and 11.04(1). The Division's authority to serve as the Board's hearing examiner is conferred by Wis. Stat. § 227.43(1m).

3. A hearing was held May 18–21 and 28–29, 2015, Jeffrey D. Boldt, administrative law judge, presiding. The parties submitted written briefs, and the last filing was received on November 7, 2015.

4. The issue to be decided is whether the appellants should be classified as protective occupation participants under Wis. Stat. § 40.02(48)(a) since December 23, 2012, when their employer began treating them as general occupation employees.

FINDINGS OF FACT

5. This case involves the appeals of five individuals who work for Chippewa County in the Chippewa County Jail. The parties agreed to proceed with the case through a combined hearing. All have been employed by the County for all times relevant to these proceedings. Blaine Proue is employed as a Jail Lieutenant, Robert Jensen as a Jail Sergeant, Curtis Dutton as a

Jailer, Jeffrey Hanzlik as a Transport Deputy, and Daniel Modl as a Huber/Electronic Monitoring Deputy.

6. Each of the appellants has, for most of the tenure of his employment with the County, been continuously reported by the County to the Department of Employee Trust Funds (Department) as a protective occupation employee.

7. Every employee who has held the positions of Chippewa County Jail Lieutenant, Jail Sergeant, Jailer, Transport Deputy, and Huber/Electronic Monitoring Deputy has been continuously categorized as a protective occupation participant since sometime in the late 1980s.

8. On or about December 12, 2012, the County notified the appellants that it was changing their employment classification for Wisconsin Retirement System (WRS) purposes from protective occupation to general employee, effective December 23, 2012.

9. Employees have a right of direct appeal to the Board regarding an employer's classification of their employment status. The appellants each sought review of Chippewa County's decision to reclassify them. (R. 8393-8415.)

*Proue*

10. Proue testified that he has been employed as the jail lieutenant in Chippewa County for sixteen years and is second in command in the jail operation. He is part of the command staff and is one of two supervisors in the jail.

11. Proue's job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. In a survey, he described the major purpose and objectives of his job: "To ensure the safe and effective management of all jail operations. To comply with all State and Federal guidelines while protecting the Public and the rights of the inmate population." Proue listed his "operational responsibilities" in the jail to include supervising the jail division, reviewing jail staff documents, enforcing inmate policies and procedures, preparing jail division payroll, developing and maintaining the jail division schedule, and completing annual performance evaluations.

12. Proue's testimony confirmed the supervisory nature of his position. Proue testified that his supervisory responsibilities include overseeing the work of the jail staff and conducting evaluations of the staff. He testified about his "typical day:"

Q. Can you walk us through a typical day, tell us what your typical duties would be, what you do during the day, try to list all the various duties that might be included within a typical day.

A. Well, it can vary from day to day. But typical would be to check with booking, see who came in during the night. Why they're being held. Check with medical. See if there's any inmates with current health issues that need to be addressed. Review reports. Go over scheduling. Check with the staff. I help out with court escorts, if staff is not available to do that. Meet with the captain over new policies. Talk about procedural changes. Attend meetings for different projects we have going on.

(R. 1088-89.)

13. Proue testified that he also "occasionally" performs jailer duties such as filling in shifts as a jailer, conducting rounds, and distributing meals.

14. Proue explained how an investigation would be conducted if contraband were discovered in the jail and how charges would be forwarded to the District Attorney if the case had merit. He testified it is "very seldom" that he is involved in any actual arrests or referrals of charges to the District Attorney.

15. Proue admitted that his job description provides an accurate description of his job duties, with the limited exception of those duties that have been transferred to others. Proue offered no testimony about the percentage of time he spends on any one activity.

16. Proue provided no evidence that his job involves frequent exposure to a high degree of danger or peril or that it requires a high degree of physical conditioning.

*Jensen*

17. Jensen is a supervisor on the second shift. He testified that he is responsible for overseeing the work of the jail staff and ensuring that it is done properly.

18. Jensen's job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. Jensen acknowledged that he performs the duties described in his job description, which include supervision and direction of the workforce, preparing shift schedules, ensuring adherence to procedures and schedules for meals, laundry and cleaning, ensuring that rounds are completed, inspections of staff, equipment and documentation of activities, performance evaluation of employees, and training of employees. He testified that his job description and the post order about the jail sergeant position reflect his job responsibilities.

19. Jensen testified about occasional activities that are more similar to what police officers do, such as investigating potential criminal misconduct in the jail, investigating fights that have occurred in the jail, and requesting arrest warrants for escapees. Jensen testified that he responded to one incident in which the circuit court judge purportedly called the jail for assistance in dealing with a disruptive person; he could remember only one such incident. Jensen testified that he was involved in a drug bust in the church in the jail "quite a while ago." Jensen testified to another incident in which an out-of-control inmate damaged a cell. Jensen provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

20. Jensen provided no evidence that his job involves frequent exposure to a high degree of danger or peril or that it requires a high degree of physical conditioning.

*Dutton*

21. Dutton has been employed as a jailer with Chippewa County for sixteen years. His job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. Dutton testified that his job description, marked as Exhibit 45, lists the essential duties and responsibilities of his position. That description describes booking inmates, making rounds, maintaining discipline, conducting surveillance of inmates, monitoring and operating jail equipment, controlling

access to the jail, interpreting bond conditions and commitment orders, maintaining communication between shifts with other jail staff, completing required paperwork, providing for medical attention needed by the inmates, assisting with the food service program, delivering food and linens, handling visitors, maintaining Huber inmate compliance, and transporting inmates.

22. Dutton testified about occasional work that is more similar to what a police officer does. Dutton testified that he was a member of the SWAT team for 13 years, but jailers are no longer allowed to participate on SWAT. He was the commander of the Correctional Emergency Response Team, and recalled a riot in the jail 11 years ago, but it has not been called out for the past five years. Dutton testified to investigating some crimes in the jail at times during his sixteen-year career, including theft, obstructing, resisting, disorderly conduct, battery to an inmate, and battery to law enforcement. Dutton testified that he occasionally listens to inmate phone calls. Dutton provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

23. Dutton provided no evidence that his job involves frequent exposure to a high degree of danger or peril and requires a high degree of physical conditioning.

#### *Hanzlik*

24. Hanzlik has been employed as Chippewa County's transit officer for 15 years. On occasion, he fills in and does the duties of a jailer.

25. Hanzlik's duties transporting inmates generally do not entail currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. As set out in the post order for his position, Hanzlik's duties and responsibilities include coordinating all incoming orders of the court for transportation of all inmates, patients and others for scheduled court appearances; transporting inmates; processing all extraditions to and from Chippewa County, including processing all paperwork associated with the extradition; conducting fleet inspections to make sure all cars are serviced and equipped to department standards; and assisting the Huber officer with Huber checks and tasks.

26. Hanzlik described the principal duties of his position:



Q Right. And your job is to take, as at least in the case of an inmate, to take someone who's in custody, and maintain them in custody in a motor vehicle from point A to point B, whatever point [B] may be?

A. My job is to bring the prisoner from point A to point B.

(R. 1066.) Hanzlik also performs jailer duties when needed and does court escort work, including using an electronic shock device.

27. Hanzlik testified that his job may require him to engage in activities that are similar to those performed by a police officer. If there is an escape or the transportee commits a crime or rule violation, Hanzlik conducts an investigation. He testified that if an arrest is warranted, he executes the arrest. Hanzlik provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

28. Hanzlik provided no evidence that his job involves frequent exposure to a high degree of danger or peril. While the transport environment is less controlled than the jail, his testimony did not support a finding that he is frequently exposed to a high degree of danger. He offered no testimony that his position requires a high degree of physical conditioning.

#### *Modl*

29. Modl has been employed as the Huber Deputy in Chippewa County since 2001. Modl supervises inmates who are granted Huber work release privileges, as well as inmates placed on electronic monitoring.

30. Modl's duties running the Huber program generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. As described in the relevant post order (Jt. Exh. 9:41), Modl's duties and responsibilities include managing the Huber and electronic monitoring program; coordinating and conducting transport and court scheduling in the absence of the transport officer; adhering to all written Huber ordinances, policies and procedures; maintaining a weekly Huber roster; periodically checking on Huber inmates in the field; answering voicemail and return phone calls; investigating Huber and electronic monitoring client complaints and violations; conducting discipline hearings for Huber violations; reviewing requests for child care; reviewing Huber transfers; approving Huber deviations; reviewing requests for electronic monitoring; making home visits

on electronic monitoring clients as needed; and maintaining electronic monitoring equipment.

31. Although he enjoys more autonomy in the field than the jailers in the jail, Modl offered no testimony regarding the percentage of time he spends on any one activity. The evidence does not support a finding that he spends 51 percent or more of his time actively detecting or preventing crimes committed by these inmates.

32. Modl provided no evidence that his job involves frequent exposure to a high degree of danger or peril and that it requires a high degree of physical conditioning. The offenders qualifying for Huber are the least dangerous offenders. Modl's only altercations with offenders occurred in the jail, not with offenders on release. As to the physical demands of the job, Modl did not say that a high degree of physical conditioning was required; instead, he indicated that "you just have to be in – I would say in shape or conditioned." (R. 1200.)

#### CONCLUSIONS OF LAW

33. The appellants seek classification as protective occupation participants. Wisconsin Stat. § 40.02(48)(a) defines "protective occupation participant:"

[A]ny participant whose principal duties are determined by the participating employer, or, subject to s. 40.06(1)(dm), by the department head in the case of a state employee, to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.

The Board has interpreted "principal duties" to require that 51 percent or more of the employee's duties to be spent in active law enforcement. *See Mattila v. Emp. Trust Funds Bd.*, 2001 WI App 79, ¶¶ 14 n.3 & 15, 243 Wis. 2d 90, 626 N.W.2d 33. The Board has defined "active law enforcement" to include being "actively, currently and directly involved in detecting and preventing crime and enforcing laws or the ordinances of a participating employer." *Mattila*, 243 Wis. 2d 90, ¶ 14 n.3.

34. Because protective occupation participants can retire at age 50 and enjoy other significant employment benefits over general occupation employees, the test is a strict one. The Wisconsin court of appeals recognized that the designation is limited to a "narrow class" of employees who meet

"stringent standards." *Cty. of La Crosse v. WERC*, 170 Wis. 2d 155, 167, 488 N.W.2d 94 (Ct. App. 1992), *rev'd on other grounds*, 180 Wis. 2d 100, 508 N.W.2d 9 (1993).

35. An employee cannot qualify for protective occupation status simply through his employer's decision to so classify him in the past. The employee's job duties must meet the statutory definition of active law enforcement. *Mattila*, 243 Wis. 2d 90, ¶¶ 14-15. Just as an employee cannot definitively qualify as a protective occupation participant by having his employer deputize him, he also cannot definitively achieve that status by reaching an agreement with his employer to so report him.

36. The question of whether jailers meet the three-part requirements of Wis. Stat. § 40.02(48)(a) has been litigated on a number of occasions, including in *Mattila*. As the record reflects (R. 243-479), this Board has consistently held over a number of decades that jailers do not meet the definition of protective occupation participants. The Board has concluded that 51 percent of their duties do not consist of active law enforcement.

37. To the extent these cases were appealed, the court of appeals has affirmed the Board's decisions. The court of appeals decision in *Mattila* does not squarely address the issue because the jailers in that case decided to rely on their status as deputy sheriffs, not their actual job duties. *Mattila*, 243 Wis. 2d 90, ¶¶ 14-15 & n.3. The court of appeals did reach the question of whether jailers with duties similar to those of Proue, Dutton, and Jensen in *Hoermann v. Employee Trust Funds Board*, 216 Wis. 2d 112, 573 N.W.2d 899 (Ct. App. 1997), in an unpublished opinion. It concluded that the jailers' principal duties did not constitute active law enforcement because they did not devote at least 51 percent of their time to active law enforcement.

38. Further, the appellants must satisfy the second and third parts of the test. If an employee meets the principal duties test, he still must show that his job entails frequent exposure to a high degree of danger and peril and requires a high degree of physical conditioning. Wis. Stat. § 40.02(48)(a). This is a fact-specific inquiry. In prior appeals by jailers, the Board has reached varying conclusions, depending on the facts presented, about whether the jobs met these tests. Compare R. 477-47 and 292 (concluding jailers did not meet those requirements) with 274 (concluding that they did).

39. Proue, Dutton, and Jensen are jailers or jailer supervisors for Chippewa County. They make out no case that their duties are meaningfully different from those of the earlier jailer appellants.

40. Like the appellants in the consolidated 2015 appeals of local airport workers, 14-ETF-008 –011, the appellants contend that it is the qualitative importance of their duties, not the quantity of time, that matters. (R. 81; 113; 116.) As this Board has previously concluded, this reading does not square with *Mattila*. The “principal duties” test is based on the way an employee spends his or her time, not the qualitative importance of a particular duty.

41. The appellants also suggest that crime detection and prevention is built into everything they do. Jensen, for example, testified that custodial duties such as delivering laundry, medication, and food provide an opportunity to see whether inmates are engaged in any illegal activity—so that, in a general way, that task is “law enforcement.” The appellants’ premise reads the statutory definition too broadly. To be principally engaged in “active law enforcement,” the employee must primarily be engaged in actively detecting or preventing crime. Delivering laundry, food and medication may provide an opportunity to enforce the law at times, but that is not the primary purpose of the role, and it is not active law enforcement. There are many professions, such as the district attorney investigator position at issue in the *Triolo* appeal, that involve enforcing the law in a broader sense. But it is only a narrow band of active law enforcement positions that qualify for classification as protective occupation participants.

42. Even if the appellants could meet the 51 percent requirement, they do not satisfy two other requirements of the definition.

43. First, the appellants’ duties do not expose them to “frequent” exposure to a high degree of danger or peril. The appellants provide evidence that sometimes they are exposed to danger, and testified to episodic moments of danger. But that does not mean their exposure is “frequent” and of a “high degree.”

44. Second, the appellants concede that the position description requires no physical conditioning, much less a “high degree” of physical conditioning.

45. In theory, a jailer could present a case that the duties of his position are significantly different from those of the jailer appellants in the Board’s past cases. But Proue, Dutton, and Jensen do not do this. For this Board to find that Proue, Dutton, and Jensen are protective occupation participants, it would have to abandon the position it has taken regarding

jailers for the last twenty years and essentially ignore its own definition, accepted in *Mattila*, of active law enforcement.

46. Proue, Jensen, and Dutton failed to demonstrate that they meet the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

47. Hanzlik says his job is different from that of other jailers because he spends most of his time transporting prisoners from place to place, including doctor appointments, other jail facilities, and hospitals. Hanzlik does not persuasively explain how the daily work of transporting prisoners is "active law enforcement" within the meaning of the Board's definition. Hanzlik's duties are primarily custodial, ensuring the safe transport of inmates and others in the community. Hanzlik failed to show that 51 percent or more of his time is spent in active law enforcement.

48. Further, like Proue, Dutton, and Jensen, Hanzlik also fails to meet either the exposure to danger or high degree of physical conditioning requirement. Hanzlik's job may be somewhat more dangerous than the jailers' because he is on the road with offenders rather than just the controlled environment of the jail. But he did not testify to being frequently exposed to a high degree of danger or peril. He testified to no requirement of a high degree of physical conditioning.

49. The hearing examiner's proposed decision would find that Hanzlik meets the requirements for a protective occupation participant because Hanzlik carries a weapon and wears a uniform like a police officer; is responsible for making sure that individuals do not escape; and operates "independently in the field." Those factors do not correlate with the definition of active law enforcement. Ensuring that inmates do not escape is a core duty shared by all jailers, who, as discussed above, have never been treated as engaged in active law enforcement. The independence of an employee is not what defines him or her as engaging in active law enforcement. And whether Hanzlik's uniform looks like those worn by police officers is irrelevant to whether he engages in particular types of duties. The hearing examiner also did not analyze the danger or physical conditioning requirements as applied to Hanzlik's position.

50. The retracted expert opinion of McRoberts relied on by the hearing examiner suffers from the same deficiencies: it relies on irrelevant criteria, like the employee's independence; makes no analysis of the dangerousness and

physical conditioning aspects of the job; and fails to assess how much of the employee's day is spent on active law enforcement.

51. Hanzlik failed to demonstrate that he meets the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

52. Modl, the Huber officer for the County, argues that his job is also meaningfully distinct from other jailers. While Modl spends some time investigating offenders' activities and monitoring them using GPS and alcohol-monitoring devices, Modl also failed to show that 51 percent or more of his time is spent engaged in active law enforcement. In the course of running the Huber program, Modl's responsibilities are primarily administrative and supervisory, overseeing Huber inmates' needs while on work release and ensuring their compliance with the program's requirements.

53. Further, Modl fails to meet either the exposure to danger or high degree of physical conditioning requirement. Modl did not testify that he is "frequently" exposed to a "high degree of danger or peril." As the County pointed out, the offenders qualifying for Huber are the least dangerous offenders. Modl's only altercations with offenders occurred in the jail, not with offenders on release. As to the physical demands of the job, Modl did not say that a high degree of physical conditioning was required.

54. In concluding that Modl met the requirements to be a protective occupation participant, the hearing examiner considered that Modl works independently in the field; as discussed above, that is not part of determining whether he is engaged in active law enforcement. The hearing examiner also noted that Modl may occasionally be called upon to assist police officers with an arrest, but such occasional duties cannot meet the 51 percent test; the County also asserts that even this assistance would occur while he is off duty. The hearing examiner did not analyze whether Modl spent 51 percent or more of his time engaged in duties that constitute active law enforcement. The hearing examiner also did not analyze whether Modl satisfies the frequent exposure to a high degree of danger and the physical conditioning requirement prongs of the test.

55. Modl failed to demonstrate that he meets the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

#### VARIATIONS FROM HEARING EXAMINER'S PROPOSED FINAL DECISION

1. The final decision discusses facts relevant to the danger/peril and physical conditioning requirements more thoroughly. Unsupported or irrelevant facts have been deleted.

2. The final decision addresses the appellants' argument that it the qualitative importance of the employee's duties, not the quantity of time, that determines whether he meets the principal duties test. The final decision also addresses their argument that daily jailer duties, such as making rounds, are active law enforcement because they may provide opportunities to detect or prevent crime and enforce the law.

3. The final decision addresses the appellants' argument that they are entitled to continue to be classified as protective participants because that is how the County classified them originally.

4. The final decision deletes conclusions that it was reasonable for the County to have classified the jailers differently in the past. That is irrelevant to the conclusions in these appeals. In theory, it is possible that a jailer would have significantly different duties than the jailers in past appeals, requiring a different outcome. But these jailers did not present such a case.

5. The final decision discusses the governing statute and case law more thoroughly.

6. The final decision concludes that Hanzlik and Modl do not meet the definition of a protective occupation participant.

## PARTIES FOR PURPOSES OF JUDICIAL REVIEW

Pursuant to Wis. Admin. Code §§ ETF 11.03(7) and 11.12(1)(c), the following persons or entities participated in and are certified as PARTIES to this appeal:

Blaine Proue, Curtis Dutton, Jeffrey Hanzlik, Robert Jensen, and Daniel Modl,  
by

Attorney Roger W. Palek  
Wisconsin Professional Police Association  
660 John Nolen Drive, Suite 300  
Madison, WI 53713

Chippewa County, by

Attorney Daniel J. Borowski  
von Briesen & Roper, SC  
411 E Wisconsin Avenue, Suite 1000  
Milwaukee, WI 53202-4427



## 980.08(4)(dm) - Statute Excerpts for Supervised Release Committee

1. If the court finds that all of the criteria in par. (cg) are met, the court shall order the county of the person's residence, as determined by the department of health services under s. 980.105, to prepare a report. The county shall create a temporary committee to prepare the report for the county. The committee shall consist of the county department under s. 51.42, a representative of the department of health services, a local probation or parole officer, the county corporation counsel or his or her designee, and a representative of the county that is responsible for land use planning or the department of the county that is responsible for land information. In the report, the county shall identify an appropriate residential option in that county while the person is on supervised release. In counties with a population of 750,000 or more, the committee shall select a residence in the person's city, village, or town of residence, as determined by the department of health services under s. 980.105 (2m). The report shall demonstrate that the county has contacted the landlord for that residential option and that the landlord has committed to enter into a lease. The county shall when identifying an appropriate residential option:

- a. Ensure that the person's placement is into a residence that is not less than 1,500 feet from any school premises, child care facility, public park, place of worship, or youth center. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if any school premises, child care facility, public park, place of worship, or youth center is established within 1,500 feet from the person's residence after he or she is placed in the residence under this section.
- b. If the person committed a sexually violent offense against an adult at risk, as defined in s. 55.01 (1e), or an elder adult at risk, as defined in s. 46.90 (1) (br), ensure that the person's placement is into a residence that is not less than 1,500 feet from a nursing home or an assisted living facility. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if a nursing home or an assisted living facility is established within 1,500 feet from the person's residence after he or she is placed in the residence under this section.
- c. If the person is a serious child sex offender, ensure that the person's placement is into a residence that is not on a property adjacent to a property where a child's primary residence exists. For the purpose of this subdivision, adjacent properties are properties that share a property line without regard to a public or private road if the living quarters on each property are not more than 1,500 feet apart. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if a child establishes primary residence in a property adjacent to the person's residence after the person is placed in the residence under this section.

2. When preparing the report, the county shall consult with a local law enforcement agency having jurisdiction over the residential option. The law enforcement agency may submit a written report that provides information relating to the residential option, and, if the law enforcement agency submits a report, the county department shall include the agency's report when the county department submits its report to the department of health services.

3. To assist the county in identifying appropriate residential options for the report, within 30 days after the court orders the county to prepare the report, the department of health services shall determine the identity and location of known and registered victims of the person's acts by searching its victim database and consulting with the office of victim services in the department of corrections, the department of justice, and the county coordinator of victims and witnesses services in the county of intended placement, the county where the person was convicted, and the county of commitment. The county may consult with the department of health services on other matters while preparing the report and the department of health services shall respond within 10 days.

4. The county shall submit its report to the department of health services within 120 days following the court order. A county that does not submit its report within 120 days violates the person's rights under s. 51.61, and each day that the county does not submit the report after the 120 days have expired constitutes a separate violation under s. 51.61. Notwithstanding s. 51.61 (7), any damages beyond costs and reasonable actual attorney fees recovered by the person for a violation shall be deposited into the appropriation account under s. 20.435 (2) (gz).

## PENALTIES FOR WIS. STAT. 51.61 RIGHTS VIOLATIONS

### **51.67(7)**

(a) Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than \$100 for each violation and such costs and reasonable actual attorney fees as may be incurred.

(b) Any patient whose rights are protected under this section may bring an action against any person, including the state or any political subdivision thereof, which willfully, knowingly and unlawfully denies or violates any of his or her rights protected under this section. The patient may recover such damages as may be proved together with exemplary damages of not less than \$500 nor more than \$1,000 for each violation, together with costs and reasonable actual attorney fees. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

(c) Any patient whose rights are protected under this section may bring an action to enjoin the unlawful violation or denial of rights under this section and may in the same action seek damages as provided in this section. The individual may also recover costs and reasonable actual attorney fees if he or she prevails.

(d) Use of the grievance procedure established under sub. (5) is not a prerequisite to bringing an action under this subsection.

(7m) Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section by unreasonably precluding the patient from doing any of the following may be fined not more than \$1,000 or imprisoned for not more than 6 months or both:

(a) Using the grievance procedure specified in sub. (5).

(b) Communicating, subject to sub. (1) (p), with a court, government official or staff member of the protection and advocacy agency that is designated under s. 51.62 or with legal counsel.

## BOARD OF SUPERVISORS

Brown County



305 E. WALNUT STREET

P. O. BOX 23600

GREEN BAY, WISCONSIN 54305-3600

PHONE (920) 448-4015 FAX (920) 448-6221

SUPERVISED RELEASE COMMITTEE

### **SUPERVISED RELEASE COMMITTEE**

Formed Pursuant to Wis. Stats. Sec. 980.08

THURSDAY, AUGUST 30, 2018

9:00 AM

ROOM 650, NORTHERN BUILDING

305 EAST WALNUT STREET, GREEN BAY, WI 54301

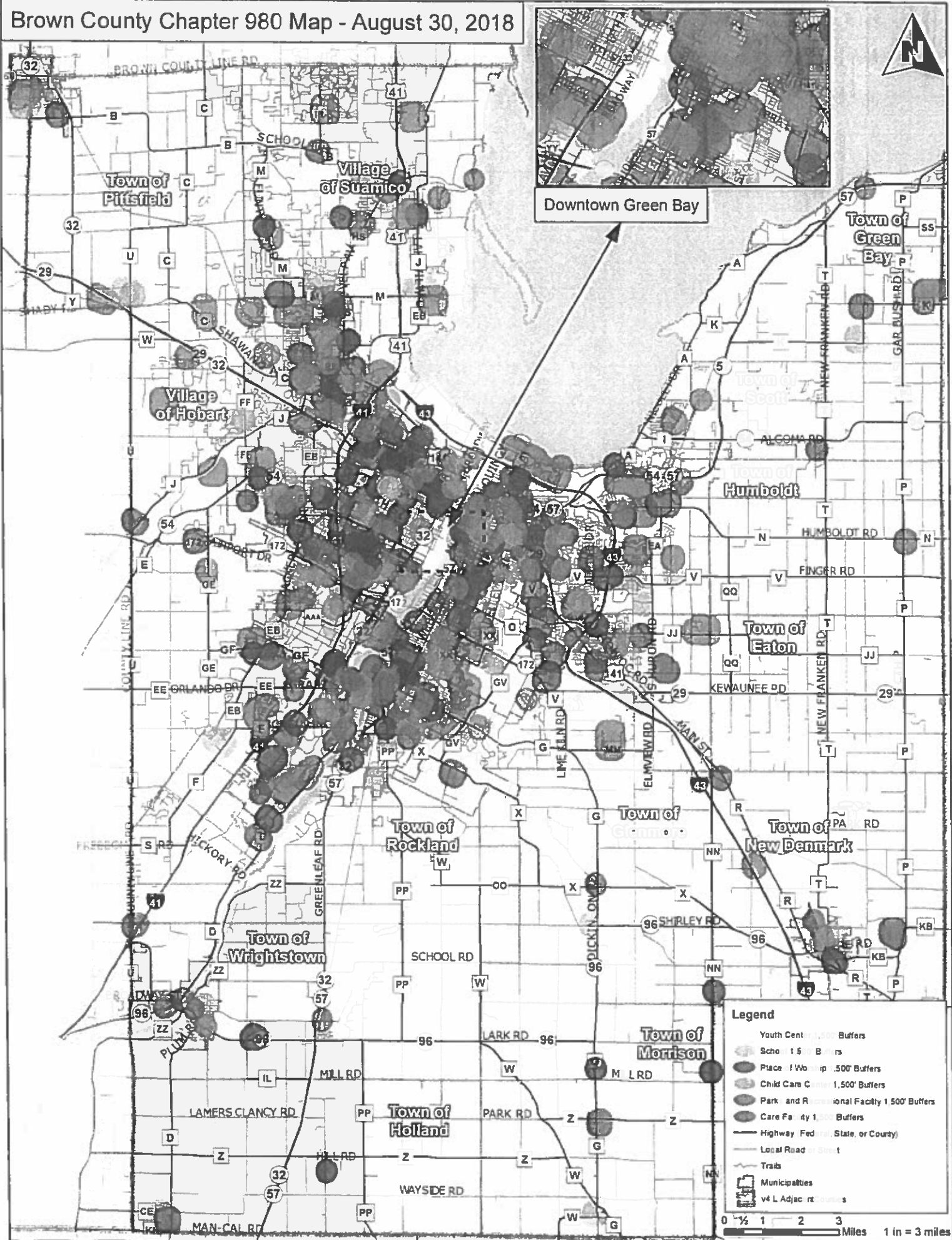
NOTICE IS HEREBY GIVEN THAT THE COMMITTEE MAY TAKE ACTION  
ON ANY ITEM LISTED ON THE AGENDA

- I. Call Meeting to Order.
  - II. Identify Membership (5 Members as set by Statute, each may have an Alternate Designee):
    - a. County 51.42 (Community Programs) Department Member and Alternate Designee;
    - b. Wisconsin Department of Health Services Member and Alternate Designee;
    - c. Local Probation or Parole Member and Alternate Designee;
    - d. County Corporation Counsel and Alternate Designee; and
    - e. County Land Use Planning Member and Alternate Designee.
  - III. Roll Call and Establishment of Quorum
  - IV. Elect Chair (controls Agenda and Meeting), Vice-Chair (acts as Chair in absence of Chair and Chair Alternate) and Secretary (takes Minutes).
  - V. Approve/Modify Agenda.
  - VI. Approve/Modify Minutes of Last Meeting (if applicable).
- 
1. Review "Brown County Chapter 980 Map"
  2. Closed Session – Discussion of Specific Supervised Release Cases, as follows:
    - a. OPEN SESSION: Motion and Recorded Vote pursuant to Wis. Stats. Sec. 19.85(1), regarding going into closed session pursuant to: 1. Wis. Stats. Sec. 19.85(1)(g), i.e. conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved; and 2. Wis. Stats. Sec. 19.85(1)(f), i.e. considering financial, medical, social or personal histories of specific persons, which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, in particular, to discuss and apply confidential information and statutory factors to specific offender cases to develop potential placements for supervised release per Wis. Stat. Sec. 980.08(4)(dm).
    - b. CONVENE INTO CLOSED SESSION: Pursuant to Wis. Stats. Sec. 19.85(1)(g), the Supervised Release Committee shall convene into closed session to discuss Specific Supervised Release Cases, including discussing and applying confidential information and statutory factors to Specific Supervised Release cases to develop potential placements for supervised release per Wis. Stat. Sec. 980.08(4)(dm).
    - c. RECONVENE INTO OPEN SESSION: The Supervised Release Committee shall reconvene into open session for possible voting and/or other action resulting from discussing and applying confidential information and statutory factors to Specific Supervised Release cases to develop potential placements for supervised release per Wis. Stat. Sec. 980.08(4)(dm).

3. Discussion of Items for Next Agenda.
4. Adjourn.

Notice is hereby given that action by the Committee may be taken on any of the items which are described or listed in this agenda. Please take notice that it is possible additional members of the Board of Supervisors may attend this meeting, resulting in a majority or quorum of the Board of Supervisors. This may constitute a meeting of the Board of Supervisors for purposes of discussion and information gathering relative to this agenda.

# Brown County Chapter 980 Map - August 30, 2018



**PROCEEDINGS OF THE BROWN COUNTY**  
**SUPERVISED RELEASE COMMITTEE**

A regular meeting of the Brown County Supervised Release Committee was held on Thursday, August 30, 2018 in Room 650, Northern Building, 305 East Walnut Street, Green Bay, WI.

**SUPERVISED RELEASE COMMITTEE – CURRENT MEMBERS AND ALTERNATES:**

- 1) **Brown County Corporation Counsel Office**  
Samantha Wagner, Chair; David Hemery, Alternate;
- 2) **Brown County Planning and Land Use Department**  
Devon Yoder, Vice-Chair; Dan Teaters, Alternate;
- 3) **Brown County Department of Health and Human Services**  
Ian Agar, Secretary; Eliza Killian, Alternate;
- 4) **Wisconsin Department of Health Services**  
Mick Chase, Member; Angie Serwa, Alternate; Scott Timm, Alternate; and
- 5) **Wisconsin Probation and Parole**  
Tracy Heaney, Member; Dawn Chaikowski, Alternate; Chris Susa, Alternate.

I. Meeting was called to order at 9:00 am on 08-30-2018 by David Hemery.

II. Committee Members/Alternates Present: Samantha Wagner, Devon Yoder, Ian Agar, Mick Chase and Chris Susa (Alternate).

III. A roll call established that we had a committee quorum.

IV. Election of Officers:

A motion was made by Ian Agar and seconded by Chris Susa to appoint Samantha Wagner as Chair (Controls Agenda) - passed unanimously.

A second motion was made by Chris Susa and seconded by Devon Yoder to appoint Ian Agar as Secretary (Takes Minutes) - passed unanimously.

A third motion was made by Sam Wagner, seconded by Chris Susa to appoint Devon Yoder as Vice-Chair (Acts as Chair if no Chair/Chair Alternate present) - passed unanimously.

V. A motion was made by Ian Agar and seconded by Samantha Wagner to approve the Agenda – passed unanimously.

VI. There were no Minutes to approve or modify from a prior meeting as this is the Inaugural Meeting.

1. A review of the "Brown County 980 Map" provided by Devon Yoder occurred. The map can be accessed on a micro-level to identify specific residences and locations within the county. Electronic access is anticipated at future committee meetings with the Planning Department's assistance. One of three social workers from the Brown County Outpatient Clinic Outreach staff will do on-site checks of potential properties that may be considered for housing individuals under supervised release for the committee. The Wisconsin Department of Health services works with local property owners to secure housing in areas that permit residence by supervised release clients.
2. a) Closed Session: A motion to go into closed session pursuant to Wis. Stat. Secs. 19.85(1) (a) and 19.85(1)(f) was made by Chris Susa, seconded by Samantha Wagner - passed unanimously. Non-members of the committee left the room and the door was closed.  
  
b) Convened in closed session. The Committee convened into closed session pursuant to Wis. Stat. Secs. 19.85(1) (a) and 19.85(1)(f).  
  
c) A motion was made by Ian Agar and seconded by Samantha Wagner to reconvene into open session - passed unanimously, and the door was opened.
3. Discussion of items for the next agenda occurred and the next meeting scheduled for Friday October 5th at 9am.
4. A motion to adjourn was made by Chris Susa and seconded by Devon Yoder – passed unanimously. Meeting ended at approximately 10:00 am.

These Minutes were prepared by:

Ian Agar, Secretary, Brown County Supervised Release Committee.